In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-575

GEORGE SHAMEIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Kentucky, petitioner was convicted of having accepted food stamps in exchange for non-food merchandise and cash refunds, in violation of 7 U.S.C. 2011, *et seq.* He was sentenced to imprisonment for thirty days and fined one thousand dollars. The court of appeals affirmed (Pet. App. 3a-9a).

1. The evidence showed that petitioner was the proprietor of George's Grocery, a retail store in Lexington, Kentucky, that was authorized by the United States Department of Agriculture to participate in the federal food stamp program (Tr. 18,

20).[1] On three occasions in April and May 1971, two undercover investigative aides of the Department of Agriculture obtained non-food merchandise in exchange for food stamps at petitioner's store.[2] A typical instance occurred on April 27, 1971. On that date Robert Settles, an auditor with the Department's Inspector General's office, drove the aides, Faye Cox and Edith Rogers, to the vicinity of the store (Tr. 40, 55). Before the women left the car they gave Settles all the money in their possession and Settles gave them food stamps whose serial numbers had been recorded. Settles told the women to attempt to purchase both food and non-food items with the stamps and to attempt to exchange stamps for cash at petitioner's store (Tr. 45, 55-59). As Settles watched from half a block away, Mrs. Cox and Mrs. Rogers walked into the store (Tr. 56). The women testified that they were waited on by petitioner. Using food stamps, they each purchased various food and non-food items (Tr. 120-121, 144). After Mrs. Cox made her purchases, she inquired whether petitioner would like to buy some food stamps. Petitioner asked how many she was selling. When Mrs. Cox said she had a $20 book, petitioner offered $15 for it; Mrs. Cox agreed to that price. She handed the stamps to petitioner and received $15 in cash in return (Tr. 122). Mrs. Rogers also sold petitioner a $20 book for $15 in cash (Tr. 145). After the

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[1] "Tr." refers to the trial transcript, a copy of which we are lodging with the Clerk of the Court.

[2] Food stamps may not be used to obtain non-food items at grocery stores.

women left the store, Mr. Settles looked over their purchases and found such non-food items as shoe polish, insecticide, cigarettes, paper plates, and laundry starch (Tr. 62-63). Each woman had $15 in cash (Tr. 64). Subsequently, food stamps whose serial numbers matched those of the stamps that Settles had given the women and which bore the authorization code for petitioner's store were recovered by federal agents at the Federal Reserve Bank in Cincinnati.[2] Petitioner testified at trial and denied that he ever accepted food stamps in exchange for non-food items or cash (Tr. 178, 186).

2. Petitioner contends that the trial court erred in refusing to instruct the jury on the issue of entrapment. This contention is not well founded. In the first place, as the court of appeals noted (Pet. App. 9a), there was a complete lack of evidence to show that government agents had persuaded an otherwise unwilling person to commit a crime. The women investigative aides in this case merely tendered food stamps for both food and non-food items and also asked petitioner if he would pay cash for some stamps. Petitioner accepted the stamps without hesitation. There was thus insufficient evidence upon which to submit the defense of entrapment to the jury.

In any event, the court below correctly held that

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[2] Grocers authorized to participate in the federal food stamp program may redeem stamps through banks, which in turn redeem them through the Federal Reserve System (Tr. 96-97). Each grocer is required to place his food stamp program authorization code on the back of stamps he redeems (Tr. 95).

by denying that he had ever accepted the stamps, petitioner was precluded from raising the entrapment defense. *United States* v. *Rodrigues*, 433 F. 2d 760, 761 (C.A. 1), certiorari denied, 401 U.S. 943; *Canal Zone* v. *Risbrook*, 454 F. 2d 725 (C.A. 5); *United States* v. *Carter*, 326 F. 2d 351, 353 (C.A. 7); *Ware* v. *United States* 259 F. 2d 442, 445 (C.A. 8); *United States* v. *Mehciz*, 437 F. 2d 145, 149 (C.A. 9), certiorari denied, 402 U.S. 974. Only the District of Columbia Circuit has announced a contrary rule permitting a defendant to raise the defense of entrapment while maintaining that he did not commit the acts with which he is charged. *Hansford* v. *United States*, 303 F. 2d 219, 221 (C.A.D.C.). In view of the Court's denial of certiorari in later cases adhering to the traditional rule and not following *Hanford*, and in view of unanimity of the other circuits which have considered the issue, review of the instant decision by this Court is unwarranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[3]

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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[3] This case does not present any issue about the underlying nature of the entrapment defense and there is thus no reason to await decision in *United States* v. *Russell*, No. 71-1585, certiorari granted, October 16, 1972, and *United States* v. *McGrath*, No. 72-761, pending on petition for certiorari.

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